109 (1)

Docket Number_____

Supreme Court, U.S.
FILED

08-556

MAY 27 2008

OFFICE OF THE CLERK

THE SUPREME COURT OF THE UNITED STATES

Jay Peterson,
Petitioner,
V.
Herschel J. Saperstein; Ray Quinney and Nebeker; Steven Call; Charles Foote; Craig McQuarrie; CBIZ and Mayer, Hoffman, McCann,
Respondents

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Jay Peterson, pro se
2025 North 1450 East
Provo, Utah 84604
801-847-0159

Question: Should the Court exercise its supervisory power to reverse the arbitrary dismissal without hearing of a purportedly "res judicata" RICO lawsuit against Salt Lake City's most notorious bribe paying law firm in a receivership case wherein both presiding federal judges received large cash payments from the corrupt law firm?

Question: Did RICO prosecutor satisfy the prerequisites for partial summary judgment?

Question: Should the Supreme Court play a weak, enervated second fiddle to the Italian Bribesville Court?

PARTIES TO THE PROCEEDING BELOW

The parties to the proceedings in the court whose judgment is sought to be reviewed were as in the caption.

Basis for Jurisdiction: This petition appeals the Order and Judgment of the Tenth Circuit Court of Appeals dated February 27, 2008 within 90 days.

Statutes: Original action based on RICO, Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. Section 1961-68, and pendent state law claims.

Statement of the Case: In 1993 the RICO defendants raided plaintiff's book publishing companies with a 25 man milita pursuant to an ex parte order appointing Mr. Saperstein of the law firm RQN receiver, imprisoning the employees in a crowded room, firing them, seizing the large bank accounts, and destroying the $60,000,000 book publishing companies the same day. The best selling book of the companies included in its serial editions the investigations of corruption occurring at government auctions, notably Customs.

In the following years, it became more evident that these same RICO defendants were engaged in a "pattern" of RICO prerequisite crimes. But the existence of the required two or more crimes was not known and some had not occurred until after the receivership closed in 2001. A RICO lawsuit could not have been brought until this later time based upon the two or more attempted murders, two or more bribes, and two or more extortions plead in detail in the complaint. One alleged murder was successful, of former U.S. Attorney Ron Sysack who was poisoned on the same day he planned to file and had drafted a cross claim against the RICO defendants, but at that time there were not two or more murder attempts. (The writer for the 10th Circuit Opinion claims that

these specific allegations were not made because he did not bother to read the complaint.)

The properly plead RICO lawsuit was filed in 2005, within the four year statute of limitations of its accrual, or as extended by applicable limitations law. It was then dismissed by District Court Judge Ted Stewart without hearing and by signing a ghost written order submitted by the RICO defendant law firm RQN and by the same RQN litigator who was implicated in the Salt Lake City Olympics Scandal in which many voting members of the international Olympics Committee were bribed for their votes.

It was also discovered later that both federal judges in the receivership (Benson and Boyce) had received large cash payments from the "S.J.Quinney" school of law for teaching assignments. S.J. Quinney was a founding partner in the RICO defendant law firm of Ray, Quinney, and Nebeker (RQN). Now deceased, his foundation is still controlled by RQN and donates $2,600,000 each year to the S.J. Quinney law school to pay for "special programs" such as higher pay for some law professors/ instructors.

Most recently, Federal Judge Paul Cassell quit the federal bench to teach at the S.J. Quinney law school at double the pay, a very common form of bribery in Utah, much like the notorious "higher pay" bribe in the race for state treasurer.

Argument: The Tenth Circuit has departed from the usual course of judicial proceedings as far as it thought it could possibly go to get rid of this uncomfortable scandal.

The Tenth Circuit affirmance of the dismissal is based entirely upon a "res judicata"

theory, citing three federal cases in its opinion, p.4.

However, not a word or even a hint that res judicata would be invoked in this case is found in the lower court opinion. No precedent cases or other arguments regarding the elements of res judicata were ever cited by the RICO defendants in the lower court or in their brief(s). No argument was ever made that res judicata applied.

RICO prosecutor was not on notice that res judicata would be ultimately argued by the Tenth Circuit as it, in effect, has attempted to sweep the entire scandal under the rug with vague innuendo about "res judicata."

The complex elements of a RICO "pattern" of organized crime were not at issue in the receivership, had not accrued, were not litigated, nor could they have been litigated. Under no stretch of the imagination could "res judicata" ever be a legally valid basis for dismissal of this RICO lawsuit, as none of the essential elements of claim preclusion are found nor were they argued. The subject matter of the receivership action was entirely different from these RICO allegations.

The Tenth Circuit's opinion could be accurately paraphrased as, "Have the staff writer dash off some mumbo jumbo about res judicata to get rid of this scandal."

RICO prosecutor has satisfied the legal prerequisites for partial summary judgment as demonstrated by his voluminous, unopposed filings.

A detailed expose of just one cash rich litigant, West Publishing, reveals that West has made hundreds of cash payments to federal judges, excused on the grounds that "All of our competitors do the same thing."

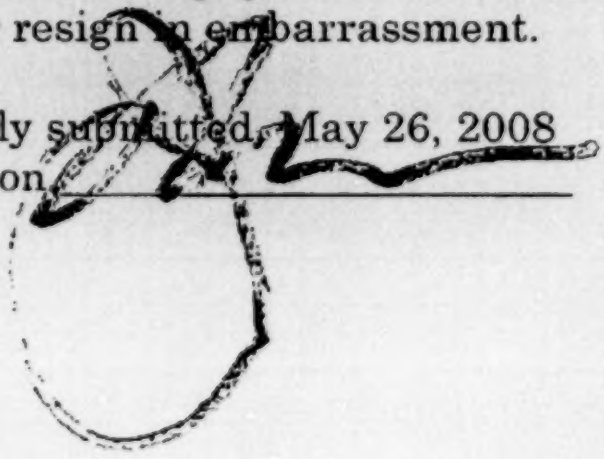
The public can rightfully conclude that many

thousands of bribes decide most federal lawsuits. Indeed, the American Public has rated the U.S. Judiciary as the most corrupt of any industrialized country, 33rd on a list, and more corrupt than notoriously corrupt Indonesia or Italy. Italy recently prosecuted in a special "Bribesville" court 5000 judges, prime ministers, and others. See the ratings chart in the Appendix. Look for more details on www.MonsterJudges.com.

CONCLUSION

The preposterous attempt by the Circuit writer to concoct an argument nunc pro tunc that new RICO crimes, including attempted murders, are already "res judicata" because of an "unfair advertising" lawsuit demonstrates that the most obscene corruption is meat and potatoes for RICO defendant S.J. Quinney, who owns the Federal Judges and signs their fat paychecks. This court should reverse or resign in embarrassment.

Respectfully submitted, May 26, 2008
Jay Peterson



App. 1

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 06-4314 (D.C. No. 2:05-CV-900-TS) (D.Utah)

FILED
United States Court of Appeals
Tenth Circuit

February 27, 2008

Elisabeth A. Shumaker
Clerk of Court

Jay H. Peterson,
Plaintiff-Appellant,

v.

Herschel J. Saperstein; Ray Quinney & Nebeker; Steven W. Call; Charles Foote; Craig McQuarrie; CBIZ & Mayer Hoffman McCann; Catherine Fuller; John C. Halerud; Michael T. Miller,

Defendants-Appellees

ORDER AND JUDGMENT

Before **BRISCOE, BALDOCK, and LUCERO,** Circuit Judges.

Jay H. Peterson brought this civil suit alleging claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. Sec 1961-68, and several pendent state-law claims. The district court dismissed the suit and later denied Peterson's motion to alter or amend

judgment pursuant to Federal Rule of Civil Procedure 59. Peterson now appeals. Exercising jurisdiction pursuant to 28 U.S.C. Sec 1291, we **AFFIRM**

We will not repeat in detail the long history behind this suit, which has been recited in connection with several appeals brought by Peterson in related proceedings. See Peterson v. United States, 239 F. App'x 428 (10th Circuit 2007); In re Peterson, 6 F.App'x 837 (10th Cir. 2001); FTC v. Peterson, 3 F.App'x 780 (10th Cir. 2001). Peterson's business was put into receivership after the Federal Trade Commission ("FTC") initiated proceedings against him for deceptive trade practices. Eventually, a settlement agreement was executed and incorporated in a court order, establishing a refund program for the relief of Peterson's customers administered by the Receiver. Upon completion of the refund program, the district court approved the Receiver's final report. Consistent with the terms of the settlement agreement, the court discharged the Receiver and his counsel and accountants (the defendants in the present suit) from any liability associated with the handling of the receivership. Peterson did not appeal that order.

Several years later, Peterson brought this action collaterally attacking the conduct of the receivership and seeking treble damages in the amount of $180 million, fees, costs, and any other appropriated relief. The district court granted defendants' motion to dismiss, holding that: (1) based on the settlement agreement and orders implementing it, as well as the final disposition of the receivership action, res judicata precluded Peterson's claims; (2) the action was barred by the

statute of limitations; and (3) Peterson failed to state a claim for relief. Peterson timely moved to alter or amend the judgment of dismissal under Rule 59, and, after that motion was denied, timely commenced this appeal. See Fed. R.App. P. 4(a)(4)(A)(iv).

We review the district court's dismissal of the case on res judicata grounds de novo, Sil-Flo, Inc. v. SFHC, Inc., 917 F 2d 1507, 1520 (10th Cir. 1990), and its denial of the Rule 59 motion for abuse of discretion, Phelps v. Hamilton, 122 F.3d 1309, 1324 (10th Cir. 1997). Peterson argues that, under principles of contract law, his prospective release of liability through the settlement agreement is invalid insofar as it relates to claims based on intentional torts and gross negligence. Without expressing any opinion on the application of that contract precept to the settlement agreement here, we note that it has nothing to do with the principle of res judicata invoked by the district court based on the final disposition of the the receivership proceeding, to which Peterson was a party.

"RICO is many things, but it is not an exception to res judicata." In re Met-L-Wood, 861 F2d 1012, 1016 (7th Cir. 1988); see also Fox v. Maulding, 112 F3d 453, 456-60 (10th Cir. 1997) (affirming dismissal of RICO action on basis of res judicata). Accordingly, if a party fails to raise objections or defenses at the proper time in one case, he "cannot be allowed to mount a collateral attack on an otherwise valid and final judgment and the rights established therein by subsequently raising those defenses in the disguise of civil RICO claims. Henry v. Farmer City State Bank, 808 F2d 1228, 1237 (7th Cir. 1986); see Fox, 112 F3d at 457-

58 (holding res judicata barred RICO claims that could have been raised in a prior foreclosure action because they "would impair rights that were established in the prior action").

Peterson alleges that those operating the receivership did so improperly to "loot" his business of its cash and assets, and he seeks treble damages for the "appraised value of the destroyed company." As previously noted, however, Peterson did not raise these objections in the receivership proceedings, nor did he appeal the order dismissing any and all claims against the defendants. He is, in short, mounting a collateral attack on the handling and disposition of the receivership proceeding. This he may not do, even under the auspices of a RICO action. The district court therefore correctly concluded that Peterson's underlying claims were barred, and did not abuse its discretion in finding to reason why its judgment should be altered under Rule 59.

Peterson objects to the district court's consideration of materials outside the pleadings and the lack of an opportunity to tile opposing materials under Federal Rule of Civil Procedure 56. The court's decision to dismiss Peterson's claims, however, was based on court orders that were properly considered for this purpose. See 5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, Sec. 1357 (3d ed. 2004) (noting that "numerous cases involving dismissal on the pleadings...have allowed consideration of ...items subject to judicial notice, matters of public record, orders, and items appearing in the record of the case...without converting the motion into one for summary judgment") Peterson argues that he was entitled to summary judgment on the merits,

but, again, his claims are barred by res judicata.

In addition, Peterson contends that the district court should have granted his motion for recusal. Because he filed the motion for recusal after his Rule 59 motion, and he has not separately appealed the denial of that recusal motion, we lack jurisdiction to consider the matter. Peterson also insists the district court should have ordered defendants to undergo lie detector testing, but this odd discovery request is moot in light of the legally conclusive res judicata defense.

Finally, defendants seek an award of attorney fees under Federal Rule of Appellate Procedure 38. They did not, however, comply with Rule 38's directive to proceed by a "separately filed motion." Fed. R. App. P. 38. As the Advisory Committee Note to the 1994 Amendments to the Rule explains:

"Before a court of appeals may impose sanctions, the person to be sanctioned must have notice and an opportunity to respond...A separately filed motion requesting sanctions constitutes notice. A statement inserted in a party's brief that the party moves for sanctions is not sufficient notice. Requests in briefs for sanctions have become so commonplace that it is unrealistic to expect careful responses to such requests without any indication that the court is actually contemplating such measures. Only a motion...is sufficient."

Because defendants' request is procedurally deficient, we decline to entertain it. See, e.g., Higgins v. Vortex Fishing Sys., Inc., 164 F.App'x 659, 656 N. 8 (10th Cir. 2005) (noting "it is insufficient to make such a request for attorney

fees in a party's brief") (unpublished).

The judgment of the district court is **AFFIRMED.**

ENTERED FOR THE COURT

Carlos F. Lucero
Circuit Judge

IN THE UNITED STATES COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JAY PETERSON,
Plaintiff,
Vs.
HERSCHEL J. SAPERSTEIN, et al.,
Defendants.

Case No. 2:05-CV-900 TS

MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS , DISPOSING OF REMAINING MOTIONS AND CLOSING CASE

This matter is before the Court on six motions: Defendants' Motion to Dismiss, Defendants' Motion for Joinder, Defendants' Ex Parte Motion for Leave to File Order Dismissing Consolidated Action and Awarding Sanctions, Plaintiff's Motion for Extension of Time to Respond to Rules 12(b)(6)/56 Motion, Plaintiff's Motion for Rule 11 Sanctions: Lie Detector Testing, and Defendant's Motion for Strike the Inadmissible Declaration of Jay Peterson. The Court, having considered the pleadings and being otherwise fully informed, finds that a hearing is not necessary for the resolution of this matter. The Court will grant Defendants' Motion to Dismiss, dispose of the remaining motions, and dismiss the case.

DISCUSSION

I. DEFENDANTS' MOTION TO DISMISS

On March 20, 2006, Defendants filed a

Motion to Dismiss. Plaintiff filed his opposition on April 20, 2006, and Defendants' Reply was filed on April 26, 2006. In this action, Plaintiff alleges that Herschel J. Saperstein and his attorneys are liable for damages resulting from the Receiver's enforcement of the orders made and entered in the matter of *Federal Trade Commission v. U.S. Hotline, et al.* (the "Receivership Case" or "Receiv ership Proceedings"), which was filed in the United States District Court for the District of Utah, Central Division ("District Court") on May 6, 1993.

A brief history of the proceedings prior to the filing of Plaintiff's Complaint is necessary. At the request of the government, in 1993, Mr. Saperstein was appointed as the Receiver to assist the District Court in the administration of the Receivership Case. Defendants Ray Quinney & Nebeker and Steven Call were the attorneys who were duly appointed by the District Court to represent Mr. Saperstein in the Receivership Case. The Receivership Proceedings were complex and involved various hearings and proceedings before the Honorable Dee V. Benson, United States District Judge, and the Honorable Ronald Boyce, United States Magistrate Judge. Pursuant to orders of the District Judge and the Magistrate Judge, Mr. Saperstein as Receiver recovered monies from banking institutions in Canada and Austria held in the name of Peterson and his companies for the Receivership estate. The Receivership administered the monies pursuant to the orders of the District Court for the benefit of consumers who has been mislead and defrauded by one one or more of Peterson's companies.

During the course of the Receivership Proceedings, Peterson's companies, which were

represented by the law firm of Prince, Yeates, and Geldzahler, and Peterson, who was individually represented by Charles Abbott of the law firm of Abbott & Abbott, reached a settlement with the United States, wherein it was agreed that monies held or recovered by the Receiver would be used to pay redress to tens of thousands of consumers throughout the United States and Canada who has been mislead by Peterson's companies. The parties entered into a global settlement agreement wherein it was agreed that the Receiver would administer a refund program whereby consumers could file claims with the Receiver and receive a reimbursement of their purchase money. The settlement agreement was signed by Peterson individually and his companies and was thereafter approved by and adopted as the order of the District Court on August 29, 1995.

Under the terms of the settlement agreement, Peterson and his companies released the Receiver, individually and in his official capacity, and his attorneys and accountants from any and all claims, liabilities and obligations of every kind and nature. The order approving and adopting the settlement agreement was never challenged or appealed and remains an enforceable order.

Pursuant to the settlement agreement and order approving and adopting it, Peterson and his companies further stipulated to the entry of a permanent injunction against them. The injunction, dated June 30, 1995, expressly incorporated the terms of the settlement agreement. The injunction remains a valid and enforceable order of the District Court. In addition, upon administration of the Receivership estate by

Mr. Saperstein and his counsel, a final report and account and a first supplemental report and account were presented to the District Court and approved thereby after notice and hearing, following which a second supplemental report and account was filed by Mr. Saperstein and his counsel. Thereafter, the District Court made and entered its orders approving all three- each of which also released the Receiver individually and in his official capacity and his attorneys and accountants from any and all claims, liabilities and obligations of every kind and nature.

On January 29, 1999, Peterson commenced legal action by the filing of Adversary Proceeding #99-2041 against the government and others in his individual Chapter 11 case. In that proceeding, Peterson alleged that he and his companies had been damaged as a result of actions undertaken by the government in filing the Receivership Case. After duly considering the prior proceedings before the District Court in the Receivership Case and based upon other grounds, District Judge Kimball dismissed Peterson's claims against the government, with prejudice on October 25, 1999. The United States Court of Appeals for the Tenth Circuit affirmed Judge Kimball's decision on or about September 10, 2001.

Notwithstanding the preceding events, Peterson has now filed this action against Mr. Saperstein and his attorneys seeking to recover on claims premised upon events which occurred in connection with the Receivership Case. Peterson filed his Complaint on November 1, 2005, in the above-captioned action in the District Court and in the Fourth District Court in and for the State of Utah. The state court action was removed by

Defendants, pursuant to 28 U.S.C. Sec 1452 on March 16, 2006. Thereafter, that action was consolidated into this action by the Court's March 21, 2006 Order. The Court notes that the two complaints are substantially identical.

As previously noted, Defendants filed a Motion to Dismiss on March 20, 2006. Plaintiff filed his response on April 20, 2006. The Court finds Plaintiffs' April 20, 2006 Response to Defendant's Motion to Dismiss to be unresponsive and unavailing. Plaintiff does not respond to the key points raised in Defendants' Motion, and raises issues which are unfounded and do not reasonably counter Defendants' arguments.

The Court, having considered Defendants' Motion to Dismiss, and having duly considered that the District Court has heretofore approved and adopted the settlement agreements executed by Peterson and his companies and the government, which released and discharged Mr. Saperstein, both officially and individually, and his attorneys and accountants, from any and all claims, and that the District Court has also heretofore entered orders releasing and discharging Mr. Saperstein and his Receivership counsel and accountants from any and all debts, obligations, claims, and demands of every kind and nature, including claims held by Peterson or his companies, and having further considered that Peterson brought similar claims in 1999 against the government which were dismissed by the District Court with prejudice and that the order of dismissal was affirmed by the Tenth Circuit Court of Appeals on appeal, and having also considered that any claim or objection to the Receivership Proceedings by Peterson should have been raised and adjudicated in that case and that

the District Court's orders made in the Receivership Case may not be collaterally attacked in this action, and having also determined that the purported claims alleged by Peterson are also barred by the applicable statute of limitations and that they fail to state a claim upon which relief may be granted, and having further determined that the allegations in Peterson's complaints are malicious, scurrilous, without merit and not asserted in good faith, will GRANT Defendant's Motion and dismiss this case and will further enjoin Plaintiff as set forth at the close of this Order.

"

"

"

SO ORDERED.

DATED May 17, 2006

BY THE COURT:

_/s/_____
Ted Stewart
United States District J.

Appendix 3.

Table 2: Percentage of respondents who described their judiciary/legal system as corrupt (i.e. gave it a score of 4 or 5 out of 5, when 1 = not at all corrupt and 5 = extremely corrupt).